



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

September 13, 2006

SUBJECT: **2006-0827 - Taverna Bistro** [Applicant] **Carmen A Hubbarb** [Owner]: Application located at **133 South Murphy Avenue** (near E. Evelyn Ave.) in a DSP-2 (Downtown Specific Plan/Sub-district 2) Zoning District.

Motion Special Development Permit on a 3,125 square-foot site to include tobacco use (hookah) in an existing restaurant.

REPORT IN BRIEF

Existing Site Conditions Historic two-story retail building on Murphy Avenue

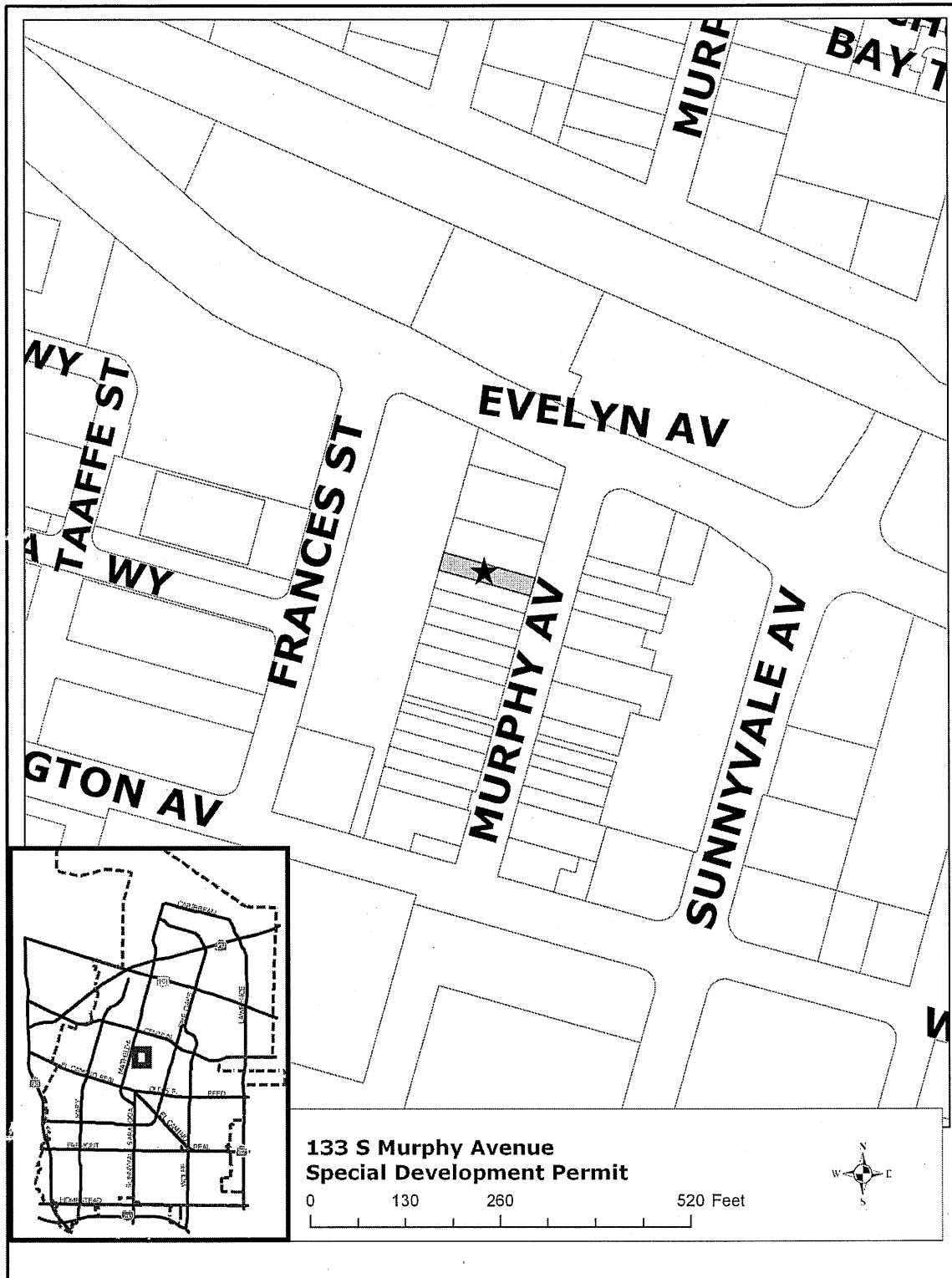
Surrounding Land Uses

North	Historic Murphy Avenue Commercial District (deli)
South	Historic Murphy Avenue Commercial District (bar)
East	Across Murphy Avenue, Historic Commercial
West	Parking District Lot

Issues Compliance with State & Local smoking restrictions

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Approve with Conditions



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Downtown Specific Plan, Block 2	Same	Downtown Specific Plan, Block 2
Zoning District	DSP (Block 2)	Same	DSP (Block 2)
Lot Size (s.f.)	3,125	Same	by SDP
Gross Floor Area (s.f.)	2,625	Same	by SDP
Lot Coverage and FAR (%)	59%	Same	100% by SDP
No. of Building On-Site	1	Same	1
No. of Stories	1	Same	3 max.
Allowable Seating in Rear Patio Area	22 seats (7 tables)	Same	by SDP
Allowable Seating in Front Seating Area	20 seats (10 tables)	Same	by SDP

ANALYSIS**Description of Proposed Project**

The applicant is proposing to provide hookah pipe smoking in the outdoor patio areas from 5:00 p.m. to 1:00 a.m. to supplement the current restaurant and entertainment uses. The proposal does not include any architectural or landscaping modifications.

A “hookah” is a water pipe that is believed to have originated India. The smoked product is a combination of tobacco, molasses, and flavoring. The tobacco is burned in a bowl and the smoke is drawn through a water container that is designed to cool and filter the smoke. The pipes are passed between patrons, who use separate mouthpieces to inhale the tobacco. Hookah tobacco contains the same products found in standard tobacco and has the same by-product of secondhand smoke. Thus, hookah pipes face the same State and Local regulations as cigarettes, cigars and pipes.

State Requirements: Hookah bars are required to comply with Labor Code Section 6404.5, the California Smoke-free Workplace Act, which makes virtually all indoor smoking in bars and restaurants illegal. There are only two

circumstances in which indoor smoking in a bar or restaurant would be allowed under State law:

- 1) The establishment qualifies as a "retail or wholesale tobacco shop", and
- 2) The establishment is owner-operated and has no employees.

Neither of these applies to the application at hand as the applicant is not requesting indoor smoking (see Attachment E for additional information on requirements). Under State law, smoking may be allowed in outdoor areas (ex. patios); this authority is deferred to the local jurisdictions.

City Requirements: The Sunnyvale Municipal Code states that “*Sixty percent of outdoor eating areas for all eating establishments shall be reserved for nonsmokers. Smoking is prohibited and unlawful in such areas*” (SMC 9.28.020(a)2). Therefore, smoking may be permitted in up to 40% of outdoor restaurant eating area. The Municipal Code requires signposting in such establishments to clarify where smoking is and is not permitted (SMC 9.28.040(a), see Attachment C, Condition of Approval 10).

Background

Block 2 of the Downtown Specific Plan requires a Special Development Permit for entertainment uses, such as smoking in the restaurant patio area.

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing / Decision	Date
2005-0269	MPP to convert garage area to additional seating	Staff / Approved	4/18/05
2005-0031	SDP to allow dancing and music	Administrative / Approved	2/16/05
2004-0274	MPP to allow outdoor dining on Murphy Ave (10 tables, 20 chairs)	Staff / Approved	8/20/04
2004-0222	MPP to allow outdoor dining behind restaurant (5 tables with 4 chairs, 2 tables with 2 chairs)	Staff / Approved	4/23/04
2002-0667	SDP to allow on-site beer and wine sales	Administrative / Approved	10/16/02

A 2005 permit for the expansion of seating area to encroach onto the public right-of-way in front of a neighboring business (planning project #2005-0666)

is no longer valid given that the neighboring site has since opened a restaurant and has requested outdoor seating in the public right-of-way in front of their business.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include existing facilities.

Special Development Permit

Use: The current uses and hours of operation for this site are:

- Restaurant use from 11:00 a.m. to 10:00 p.m. on weekdays, and from 11:00 a.m. to 11:00 p.m. on weekends;
- Service of beer and wine is permitted from 11:00 a.m. to 10:00 p.m. on Monday through Thursday, and from 11:00 a.m. to 1:00 a.m. on Friday and Saturday;
- Music and dancing from 7:30 to 8:30 p.m. on Saturday

The proposed additional use and related hours of operation are:

- Hookah pipe smoking in outdoor restaurant seating area only from 5:00 p.m. to 1:00 a.m. Monday through Sunday.

Previous permits have provided different limitations on hours of use, but a 2005 Special Development Permit (2005-0031) permitted this business to be open until 2:00 a.m.

Site Layout: The site is located in the historic downtown Murphy Street. The building has no setbacks on the front, right and left sides, with 35 feet of rear setback area which is used for a restaurant patio seating area. The building is adjacent to the neighboring buildings to the north and south. The area in front of the building is public right-of-way, but many business owners along this block of Murphy Street have been conditionally approved to use the front area as restaurant seating. The subject site has been permitted to use the front patio area since 2003. Most of the restaurant business is conducted within the building, and the permitted entertainment (dancing) is required to be conducted within the building in a designated area.

Parking: The site is located within the Downtown Parking District, and no additional parking is required as a part of this application.

Expected Impact on the Surroundings: This would be the second hookah lounge approved along the Historic Murphy Street in downtown Sunnyvale.

Public Safety has expressed concerns with managing the tobacco that is used in the pipes. There are also health concerns associated with odor and air quality from secondhand smoke, as well as the perceived nuisance of smoke for patrons not using the hookah pipes or in the vicinity of the site, such as on the neighboring front patio areas or people walking through the public right-of-way.

Given that a ventilation system is not practical for the front patio area, staff recommends that the smoking be limited to the rear of the building. Some form of ventilation is desirable to help discharge the smoke. The existing hookah bar was required to install a substantial ventilation system to minimize the impact on neighboring restaurants using outdoor seating.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

No letters were received from members of the public.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">Published in the <i>Sun</i> newspaperPosted on the site27 notices mailed to property owners and residents adjacent to the project site	<ul style="list-style-type: none">Posted on the City of Sunnyvale's WebsiteProvided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">Posted on the City's official notice bulletin boardCity of Sunnyvale's Website

Conclusion

Discussion: While the proposed use is recognized as having some potential negative impacts, it may be permitted within a specific restricted area. The key issues for this application are where to allow the proposed use and how to minimizing the impacts.

While the SMC allows for up to 40% of the patio area, the impact of the smoke in the front of the business, along the streetscape, is not desirable. Staff recommends that the hookah pipe smoking be limited to the rear patio area. However, staff recommends that the entire patio area (front and rear) be factored into the calculation of the allowed area for smoking. The question becomes how the 40% should be calculated: by floor area, by tables or by

seating. Calculating by floor area initially appears to be the easiest method of calculation; however, the previously approved permits for the front and rear patio area were by table and number of seats. Further, if a floor area is designated as permitting smoking, then there may be an incentive to place more tables or chairs in that designated area and not distribute them evenly throughout the patio area, impacting circulation and resulting in a net impact of greater than 40% of area used. Thus, staff is recommending that the calculation of allowable use be restricted by the number of tables and seats, as used in previous permits. The total number of allowable patio seating is 17 tables and 42 seats. Thus, staff is recommending limiting the allowable use for the hookah pipes to 7 tables with a total of no more than 17 seats in the rear patio area.

If in the future, the applicant is no longer permitted to use the front patio area, then the total allowable area for smoking should be reduced to the 40% of just the rear area, as permitted by Code.

Another issue is appropriate ventilation of the smoke. Locating the hookah pipe smoking to the rear patio area will minimize access of the smoke to the general public; however, there is still a high likelihood of the smoke impacting the neighboring sites. The property to the north of the site is a deli with no rear patio seating but with a second story office use. The property to the south is a bar with outdoor patio seating in the rear. The rear patio area can be divided into two sections – approximately 350 square feet adjacent to the building (listed as “A” in Attachment C) and approximately 250 square feet next to the parking lot (listed as “B” in Attachment C). Staff recommends limiting the hookah pipe smoking to the area next to the parking lot (area “B”) and requiring some form of air quality management for the smoking area (such as a fan directing the smoke way from the restaurant area).

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Special Development Permit. Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Conditions of Approval are located in Attachment B.

Alternatives

1. Approve the Special Development Permit with attached conditions.
2. Approve the Special Development Permit with modified conditions.
3. Deny the Special Development Permit.

Recommendation

Alternative 1.

Prepared by:


Jamie McLeod
Project Planner

Reviewed by:


Andrew Miner
Principal Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Letters from the Applicant
- E. Letter from Staff

Recommended Findings – Special Development Permit

Goals and Policies that relate to this project are:

Sunnyvale Downtown Specific Plan – P.LUC – 4 – Reinforce shopping, dining and entertainment uses in the downtown by expanding retail, theatre and restaurant uses in the North of Washington District, Murphy Avenue Heritage District and the Town Center Mall.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the proposed use will provide an additional entertainment use in the downtown area.
2. The proposed use is desirable, and will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the Zoning District because the use is limited to the rear of the building and provides for air quality management to minimize the impact of the smoke on neighboring properties.

Recommended Conditions of Approval - Special Development Permit

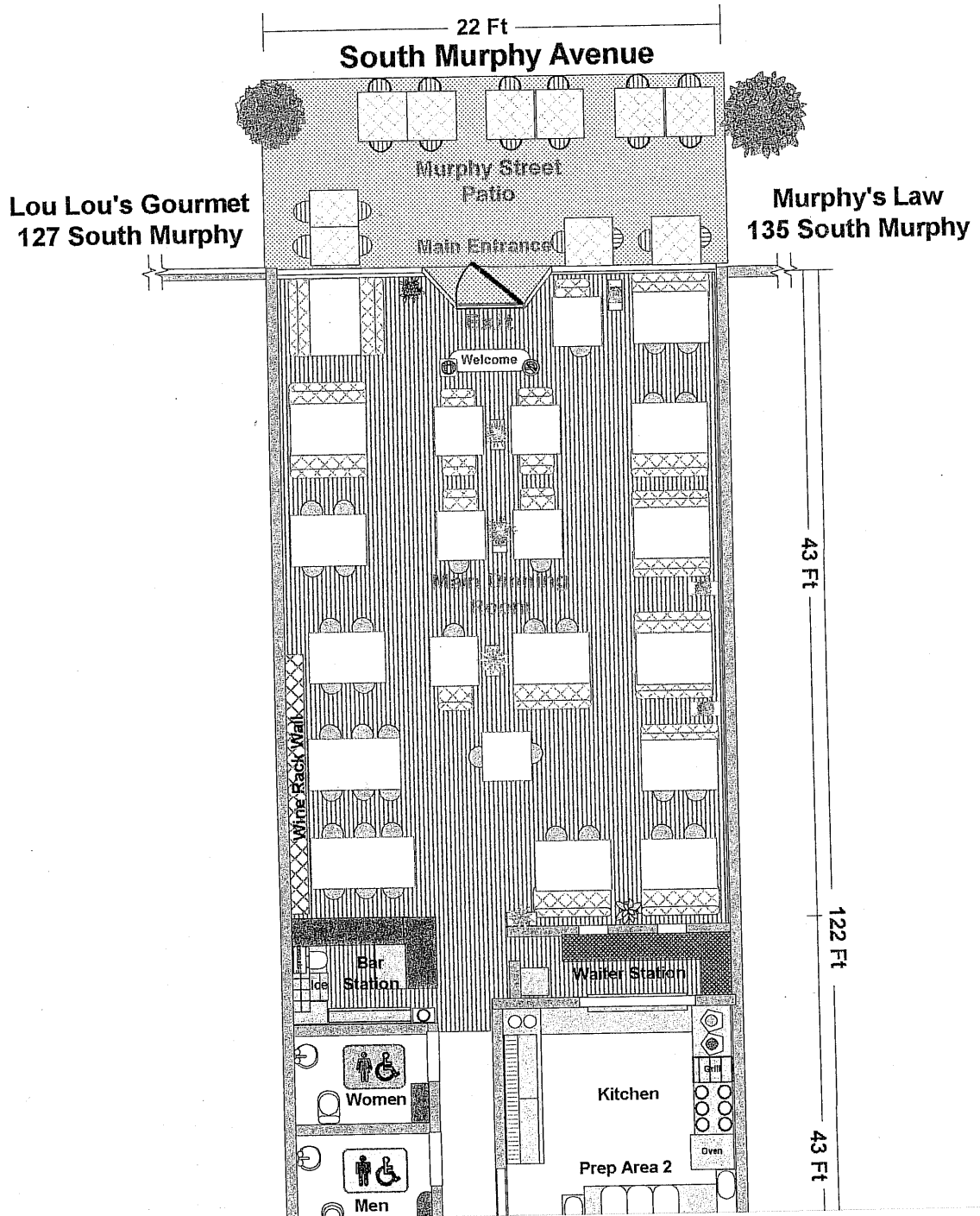
In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. Project shall be in conformance with the plans approved at the public hearing. Minor changes may be approved by the Director of Community Development; however, major changes shall be approved at a public hearing.
2. The Conditions of Approval shall be reproduced on the cover page of the plans submitted for a Building permit for this project.
3. The Special Development Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
4. The Special Development Permit for the use shall expire if the use is discontinued for a period of one year or more.
5. Once this Special Development Permit is exercised, the previously approved permits remain in force unless specifically contradicted and made null by this permit, with no further action required by any reviewing authority.
6. Obtain any other necessary permits as required by Code. This includes but is not limited to obtaining a certificate of approval from the Neighborhood Preservation Division for the proposed use. Failure to obtain a certificate of approval from the Neighborhood Preservation Division prior to commencing use of a hookah pipe on the site is grounds for revoking this permit.
7. Comply with all Alcoholic Beverage Control (ABC) license requirements. If the applicant wishes to expand the previously approved area for the ABC license, a letter shall be sent to the ABC investigating supervisor showing the expanded area; and ABC officials will inspect the site and decide whether to expand the approved area. Not complying with all ABC requirements is grounds for revoking this permit.
8. The smoking area shall not be accessible to minors.

9. All employees who enter the smoking area shall have established their consent in writing to work in a permitted smoking area. No one shall be required to work in the area where smoking is permitted as part of their job responsibilities.
10. "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every room, building or other place where smoking is prohibited by this chapter, including, but not limited to, all entrances, all restrooms and all elevators. Signs of equivalent size and character reading "Smoking is prohibited except in designated areas" shall be posed at each entrance to a building or structure where smoking is permitted in designated areas. Signs of equivalent size and character reading "Smoking Permitted" may be posted where legally applicable. Alternative means of notification may be employed, provided they are equivalent to the aforementioned signs in their effect.
11. Any new signage needs to be approved through a separate permitting process.
12. No hookah pipes shall be used inside the building or in the enclosed bar area in the rear of the site (i.e. converted garage space).
13. The hookah pipes and the tobacco used are to be monitored by the business owner or designee at all times while they are in use. Addition of any substances other than the standard hookah tobacco shall be considered a violation of this permit and grounds for revoking the permit.
14. Some form of air quality management shall be required for the smoking area, such as a fan directing the smoke way from the restaurant area, to minimize the impact neighboring properties.
15. Hookah pipes may be used in the rear patio only, in the section closest to the parking lot (listed as area "B" on site map in Attachment C).
16. A maximum of 40% of total outdoor seating area may be used. This is a maximum of 7 tables and 17 chairs; or 40% of the total (front and back, as long as front patio area is permitted by City), whichever is less.

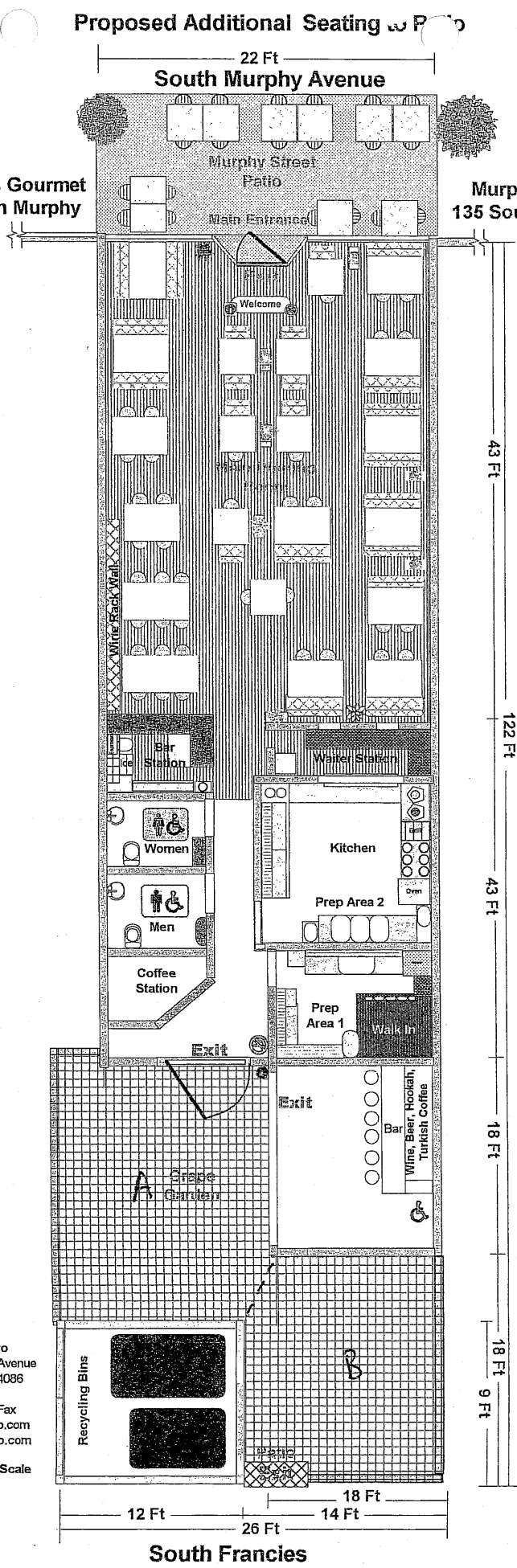
Proposed Additional Seating & Patio



Lou Lou's Gourmet
127 South Murphy

Murphy's Law
135 South Murphy

Taverna Bistro
133 South Murphy Avenue
Sunnyvale, CA 94086
408-735-9971
408-735-9013 Fax
www.TavernaBistro.com
info@TavernaBistro.com
Drawing Not To Scale



South Francies

TO: City of Sunnyvale

Thursday, Friday, July 21, 2006

FROM: Emrah Gures
Taverna Bistro
133 South Murphy Avenue
Sunnyvale, CA 94086

SUBJECT: Back Patio: Building a Wine/Beer/Turkish Coffee/Hookah Bar

Since 2002, I have been working very hard to build Taverna Bistro and make some money for my family. After building the garbage area into the current patio area and the garage into a back room, our lunch has been busy.

However, no matter what we have tried, we have had spotty to slow dinners. I have struggled to create a unique concept that would draw patrons during dinner, with no avail. Therefore, I hired a professional to help develop viable concepts to make dinners successful. After a two-week review, he came up placing a wine & beer bar in the back room and serving Hookah and Turkish coffee to draw in new customers to Murphy. This will allow us to enhance our banquet services while conducting periodic Wine and Beer Tasting.

We reviewed a number of successful operations serving Hookah on their patios i.e. Ken Zaman, Palo Alto; Tarbush, Redwood City; and others. Also, we have gain feedback from our current customers and neighbors on the viability of this effort. With this information we have reviewed our plans with our landlord who felt this was a good idea.

Therefore, we would build the bar in the back room to enhance our services. My wife and will be serving Wine & Beer, Hookah and Turkish coffee. This will be a family operation and we are not anticipating any additional personnel will be required.

As you are well aware, with the scheduled demolition of Town & Country Village and Towne Center Mall, we are anticipating a downturn on the foot traffic. We hope to minimize the impact by drawing new traffic to Murphy. To achieve this, we would market this concept in ethnic papers, magazines, TV channels, newsletters, etc. to draw new customers to Murphy Ave.

We will keep Lunch the same. The main restaurant would stay the same, but we would start offering wine, beer, coffee and hookah on the patio during dinners from 5:00 PM to 1:30 AM.

If you have any questions, please contact me at 408-735-9971.

Regards,



Emrah Gures,
Taverna Bistro
408-735-9971

TO: City of Sunnyvale

Tuesday, September 05, 2006

FROM: Emrah Gures
Taverna Bistro
133 South Murphy Avenue
Sunnyvale, CA 94086

SUBJECT: Public Notice Statement

There seems to be a miss statement on the public notice. I feel the Public Notice miss leads the public in thinking that there will be hookah available inside the restaurant.

As stated in the July 21, 2006 letter entitled "Back Patio: Building a Wine / Beer / Turkish Coffee / Hookah Bar" addressed to the City, requesting a Special Development Permit allowing hookah smoking in the Patio/Bar area. As requested by the City of Sunnyvale, we are in the process of establishing a bar with:

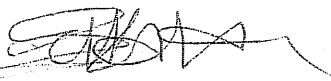
- 1) hookah that will only be available in exterior areas i.e. patio/bar, behind Taverna Bistro restaurant and not inside the restaurant. (Refer to July 21, 2006 letter)
- 2) hookah will only be available during the evening hours to the public. (Refer to July 21, 2006 letter)
- 3) hookah will only be available in clearly designated and permitted areas. (Refer to July 21, 2006 letter)
- 4) the patio/bar hookah operation will be run by owners and their family members only. (Refer to July 21, 2006 letter)

As requested by the City, we have started reviewing options in a separate exit to the patio area, isolating the restaurant guests from the patio/bar area, where hookah would be available.

Additionally, we have communicated with City employees that if having a separate address and or business entity would address their concerns, we were happy to comply. The patio area is located on 130 South Frances Street. We will apply for all permits required by the regulatory authorities to successfully service our guests' requests.

If you have any questions, please contact me at 408-735-9971.

Regards,



Emrah Gures,
Taverna Bistro
408-735-9971

August 2, 2006

Emrah Gures
133 S. Murphy Ave.
Sunnyvale, CA 94086

RE: Inquiry regarding Hookah Lounge
133 S. Murphy Ave, Sopranos Restaurant
Follow-up Letter

Dear Mr. Gures:

This letter serves as a response to your inquiry regarding a proposed Hookah Lounge at your restaurant.

California Labor Code section 6404.5 prohibits the smoking of tobacco in any form in an enclosed place of employment. Since hookah pipes use tobacco, it would be governed by the California Labor Code. However, there are two main exemptions to the prohibition against indoor smoking: (1) owner-operated establishments; and (2) retail tobacco shops.

Owner-operated establishments may not hire any employees at any time. An "employee" is any person that receives any form of compensation for his or her services. This may include part-time employees, volunteers earning tips, live entertainment such as belly dancing or janitorial services. Once there is any employee at the establishment at any time, the establishment would lose its exemption.

Labor Code section 6404.5 defines a retail tobacco shop as "any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories." If a hookah bar also sells or serves food or beverages, allows food or beverages to be brought into the establishment for consumption, or provides live entertainment, it does not qualify as a retail or wholesale tobacco shop in accordance with California Business & Professions Code section 22962. Additionally, a private smokers lounge may only be operated if it is located within or is attached to a retail or wholesale tobacco shop. A hookah bar that does not qualify as a retail or wholesale tobacco shop may not operate an indoor private smokers lounge.

Labor Code section 6404.5 does not ban outdoor smoking at establishments; however, outdoor bans have been enacted by many local jurisdictions. Several California cities (e.g. Berkeley, Davis) have banned outdoor smoking at restaurants and food venues altogether. Sunnyvale has not banned outdoor smoking in its entirety, however its use is restricted. SMC section

9.28.020(a)(2) states that " 60% (sixty) of outdoor eating areas for all eating establishments shall be reserved for nonsmokers." Therefore, if an establishment is operating as a restaurant, then only 40% (forty) of any outdoor dining areas may be designated for smoking.

If you have any questions regarding this permit, please contact Steve Lynch at (408) 730-2723 or email at slynch@ci.sunnyvale.ca.us.

Thank you for your cooperation.

Sincerely,

Steve Lynch
Senior Planner